

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Anna Steel	Team: Team # 8	CCRB Case #: 200806616	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Monday, 05/05/2008 9:15 PM	Location of Incident: § 87(2)(b)	Precinct: 83	18 Mo. SOL 11/5/2009	EO SOL 11/5/2009	
Date/Time CV Reported Mon, 05/05/2008 9:30 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 05/09/2008 3:54 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. SGT Patrick Divers	01566	892982	NARCBBN
2. DT3 Patrick Cherry	01492	926676	NARCBBN

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. DT3 Meagan Barone	00657	929686	NARCBBN
2. DT3 Andrew Amplo	03667	923505	NARCBBN
3. DT3 Domenico Scibilia	06524	927813	NARCBBN

Officer(s)	Allegation	Investigator Recommendation
A.SGT Patrick Divers	Abuse: Sgt. Patrick Divers stopped § 87(2)(b) Unknown.	§ 87(2)(b)
B.SGT Patrick Divers	Abuse: Sgt. Patrick Divers stopped § 87(2)(b)	§ 87(2)(b)
C.DT3 Patrick Cherry	Discourtesy: Det. Patrick Cherry spoke obscenely to § 87(2)(b) and § 87(2)(b)	§ 87(2)(b)
D.DT3 Patrick Cherry	Force: Det. Patrick Cherry used physical force against § 87(2)(b)	§ 87(2)(b)
E.DT3 Patrick Cherry	Abuse: Det. Patrick Cherry threatened § 87(2)(b) with the use of force.	§ 87(2)(b)

Synopsis

On May 5, 2008, at approximately 9:15 PM, § 87(2)(b) was sitting in front of § 87(2)(b) in Brooklyn. He was with an acquaintance named § 87(2)(b). Prior to the subsequent incident, § 87(2)(b) sold a small glass jar of marijuana to an individual with the admitted assistance of his girlfriend, § 87(2)(b). An unmarked vehicle parked in front of § 87(2)(b). Two officers, were identified through the investigation as Det. Megan Barone and Sgt. Patrick Divers of Narcotics Borough Brooklyn North, exited the vehicle. Det. Barone and Sgt. Divers handcuffed § 87(2)(b) (**Allegation A**). Sgt. Divers then handcuffed § 87(2)(b) (**Allegation B**). Three to four minutes later, a second unmarked vehicle pulled up and two officers, identified through the investigation as Det. Andrew Amplo and Det. Patrick Cherry of Narcotics Borough Brooklyn North, exited this vehicle. § 87(2)(b) began to yell for his mother, § 87(2)(b) and his girlfriend, § 87(2)(b). Det. Cherry allegedly told him to “Shut the fuck up” (**Allegation C**). Det. Cherry then allegedly grasped § 87(2)(b) by both elbows, pushed him towards the van, opened the doors of the van, and pushed him inside (**Allegation D**). Det. Cherry then punched him on the left side of his face and pushed him the rest of the way inside the van (**Allegation D**). Det. Cherry told him that if he did not shut up, things were going to get worse on the way to the police station (**Allegation E**). § 87(2)(b) alleged that when she approached the van to inquire about § 87(2)(b). Det. Cherry told her to “get the fuck away” from the van on two occasions (**Allegation C**). § 87(2)(b) and § 87(2)(b) were transported to the 83rd Precinct and charged with criminal sale of a controlled substance in the fourth degree and criminal sale of marijuana in the fourth degree.

§ 87(2)(b), § 87(2)(g)

Summary of Complaint

§ 87(2)(b) is § 87(2)(b). § 87(2)(b) provided a statement to medical personnel at Brooklyn Central Booking on May 5, 2008 (encl. 21). § 87(2)(b) was interviewed at the CCRB on May 23, 2008 (encl. 5a – 5f). His statements have been combined below.

On May 5, 2008, at approximately 9:15 PM, § 87(2)(b) was sitting in front of § 87(2)(b) in Brooklyn. § 87(2)(b) was wearing slippers, blue pajama pants, a green shirt and a white hooded sweatshirt. § 87(2)(b) was with his friend, whose name is § 87(2)(b) does not know § 87(2)(b)'s last name. § 87(2)(b) was speaking on his cellular phone on the sidewalk in front of § 87(2)(b). There were no other individuals in the area. § 87(2)(b) had sixty dollars in his pocket. He never removed or displayed this money. § 87(2)(b) had been sitting outside for about fifteen to twenty minutes. Before that, § 87(2)(b) had been inside his residence, located at § 87(2)(b). He explained that § 87(2)(b) is the residence of his acquaintance, § 87(2)(b). § 87(2)(b) is two houses away from § 87(2)(b).

Prior to the subsequent incident, § 87(2)(b) had a small glass jar of marijuana in his possession which was intended for distribution. The glass jar was one inch wide and one inch tall. § 87(2)(b) was not sure how much marijuana was inside the jar. He had sold this jar to an individual about ten to fifteen minutes before the subsequent arrival of the officers. § 87(2)(b) sold the marijuana from the front of § 87(2)(b). § 87(2)(b) was inside § 87(2)(b) at the time of the sale. § 87(2)(b)

did not have any narcotics in his possession at the time in which the officers arrived. § 87(2)(b), § 87(2)(e), § 87(2)(g)

An black unmarked police vehicle drove up the wrong way on Weirfield Street. There were two occupants in this vehicle, who were identified through the investigation as Det. Megan Barone and Sgt. Patrick Divers of Narcotics Borough Brooklyn North. § 87(2)(b) stated that Sgt. Divers was a white male who was about 6'2" to 6'3" tall, medium build, had white hair, appeared to be in his forties and was in plainclothes. Det. Barone and Sgt. Divers approached and handcuffed § 87(2)(b) (**Allegation A**). Sgt. Divers then instructed § 87(2)(b) to step onto the sidewalk and explained that he was going to handcuff him for his safety. Sgt. Divers then handcuffed § 87(2)(b) (**Allegation B**). Neither § 87(2)(b) nor § 87(2)(b) resisted being handcuffed in any way. Sgt. Divers then spoke to someone on his cellular phone as Det. Barone stood near him.

About three to four minutes later, second unmarked vehicle pulled up and parked behind the first. The second vehicle was a burgundy van. Two officers, identified through the investigation as Det. Andrew Amplo and Det. Patrick Cherry of Narcotics Borough Brooklyn North, exited this vehicle. § 87(2)(b) described Det. Cherry as a white male who was about 5'11" to 6'1" tall, of medium build, had very short blonde hair which gave him the appearance of being bald, and appeared to be in his mid-thirties. § 87(2)(b) described Det. Amplo as a white male who was about 5'8" to 5'9" tall, of medium build, had dark brown hair and appeared to be in his thirties. § 87(2)(b) began shouting for his girlfriend, § 87(2)(b) and his mother, § 87(2)(b) and § 87(2)(b) were in § 87(2)(b) § 87(2)(b) shouted that he was being arrested.

Det. Cherry walked up to § 87(2)(b) and said, "Shut the fuck up" (**Allegation C**). § 87(2)(b) said he would not. Det. Cherry asked whether he thought he was a tough guy and § 87(2)(b) replied negatively. Det. Cherry grasped § 87(2)(b) by both elbows and pushed him in the direction of the van while maintaining his hold on both elbows (**Allegation D**). § 87(2)(b) never resisted against Det. Cherry's efforts to place him in a van. Det. Cherry opened the van and pushed § 87(2)(b) with one hand on his back into the van (**Allegation D**). The left side of § 87(2)(b)'s face landed on the floor of the van and was not injured as a result of this fall.

While § 87(2)(b) was lying on the floor of the van, Det. Cherry punched him on the right side of his face by leaning forward over him and striking him on his upper cheek with a closed fist (**Allegation D**). Det. Cherry then placed his hands on § 87(2)(b)'s thighs and pushed him all the way inside the van, causing § 87(2)(b)'s knees to scrape against the entrance to the van (**Allegation D**). § 87(2)(b) felt his upper right cheek began to swell. Following the incident, § 87(2)(b) discovered that his wrists and knees had also sustained abrasions as a result of the incident. Det. Cherry told § 87(2)(b) that if he did not shut up, things were going to get worse on the way to the police station (**Allegation E**). Det. Cherry then closed the doors of the van.

§ 87(2)(b) could not see or hear anything that was happening outside the van. The only thing he did hear was an officer telling his mother to get away from the van. That was the only thing that the officer told his mother. § 87(2)(b) did not know which officer told her to get away from the van. Det. Cherry eventually opened the doors of the van, loosed § 87(2)(b) handcuffs and assisted him into a sitting position. § 87(2)(b) was then placed in the van as well. § 87(2)(b) was not arrested. At some point during the incident, his handcuffs were removed and he was allowed to leave.

§ 87(2)(b) and § 87(2)(b) were transported to the 83rd Precinct. § 87(2)(b) and § 87(2)(b) were charged with criminal sale of a controlled substance in the fourth degree and criminal sale of marijuana in the fourth degree. § 87(2)(b) never requested or sought medical treatment for any of his injuries. When brought before EMS at Central Booking, § 87(2)(b) stated that he was not presently sick or injured (encl. 21). He did not seek medical treatment because by the time that he was released from Central Booking, the swelling on his upper right cheek had subsided.

Results of Investigation

Additional Civilian Statements:

§ 87(2)(b)

§ 87(2)(b) is § 87(2)(b). § 87(2)(b) filed a complaint with Internal Affairs, generating log number 08-16769, on May 6, 2008 (encl. 3a – 3b). This complaint was received by the CCRB on May 9, 2008 (encl. 4a – 4b). § 87(2)(b) was interviewed by the CCRB on May 23, 2008 (encl. 7a – 7d). § 87(2)(b) statements have been combined with inconsistencies noted below.

On May 5, 2008, at approximately 9:15 PM, § 87(2)(b) was inside her residence, located at § 87(2)(b) in Brooklyn. She was with § 87(2)(b) who is the girlfriend of her son, § 87(2)(b). § 87(2)(b) did not know where her son was or what he was doing prior to the subsequent incident. § 87(2)(b) then heard § 87(2)(b) yelling, “Ma! Ma!” § 87(2)(b) and § 87(2)(b) ran outside. § 87(2)(b) saw an unmarked grey police vehicle parked in front of a burgundy police van.

§ 87(2)(b) was handcuffed and standing near the van by an officer, identified through the investigation as Det. Patrick Cherry of Narcotics Borough Brooklyn North. At the time of her complaint to Internal Affairs (encl. 3a – 3b), § 87(2)(b) contrastingly stated that § 87(2)(b) was thrown against the van, punched in the chest and then handcuffed. § 87(2)(b) described this officer as a white male who was about 5’11” tall, of husky build, with short blonde hair that gave him the appearance of being bald, had light eyes and was in plainclothes. § 87(2)(b) ran towards her front gate and was approached by a second officer, identified through the investigation as Sgt. Patrick Divers of Narcotics Borough Brooklyn North. § 87(2)(b) described this officer as a white male who was about 6’4” tall, very thin, had short brown hair, appeared to be in his fifties, and was in plainclothes.

§ 87(2)(b) stopped and asked Sgt. Divers what was happening to § 87(2)(b). Sgt. Divers explained that he was being arrested. Sgt. Divers then handcuffed § 87(2)(b) by § 87(2)(b) front gate. § 87(2)(b) did not know why § 87(2)(b) was handcuffed at the time of the incident, but later learned that § 87(2)(b) had allegedly helped § 87(2)(b) sell marijuana. § 87(2)(b) saw that an acquaintance of § 87(2)(b), § 87(2)(b) was also handcuffed and standing in front of § 87(2)(b). There were two additional officers, identified through the investigation as Det. Megan Barone and Det. Andrew Amplo of Narcotics Borough Brooklyn North, standing at the scene of the incident.

Det. Cherry pushed § 87(2)(b) towards the rear of the police van by holding his arms. § 87(2)(b) could not say what part of § 87(2)(b)’s arms Det. Cherry was holding. § 87(2)(b) was standing towards the front of the van and was about eight to ten feet from the rear of the van. From where she was standing on the sidewalk, § 87(2)(b) could not see the rear of the police van. She heard § 87(2)(b) yell, “He punched me! He punched me!” § 87(2)(b) did not see an officer punch § 87(2)(b). At the time of her complaint to Internal Affairs (encl. 3a – 3b), § 87(2)(b) stated that § 87(2)(b) was punched in the legs.

When § 87(2)(b) continued to yell, § 87(2)(b) ran towards the police van and stood approximately a foot and a half from the rear right corner of the van. § 87(2)(b) was lying on the left side of his face on the floor of the van with his legs sticking out behind him. § 87(2)(b) never saw § 87(2)(b) resist in any way. § 87(2)(b) asked Det. Cherry what he had done to § 87(2)(b). In response, Det. Cherry directed her to “Get the fuck away from the van” (**Allegation C**). § 87(2)(b) said that she wanted to see her son. Det. Cherry again instructed her to ‘get the fuck’ away from the van (**Allegation C**). § 87(2)(b) made no mention of the use of profanity on the part of the officers during her complaint to Internal Affairs (encl. 3a – 3b).

§ 87(2)(b) returned to the sidewalk and spoke with Sgt. Divers. Sgt. Divers explained that § 87(2)(b) and § 87(2)(b) had been arrested for selling marijuana, and informed § 87(2)(b) that

he was a sergeant. The officers were at the location for about twenty minutes before transporting § 87(2)(b) to the 83rd Precinct. § 87(2)(b) later met him at the precinct. As a result of the incident, § 87(2)(b) sustained lacerations on his knees, bruising to his wrists and swelling to the left side of his face. § 87(2)(b) observed these injuries when she picked him up from Central Booking.

§ 87(2)(b)

§ 87(2)(b) is eighteen years old. § 87(2)(b) is a Hispanic female who is 5'3" tall, weighs 160 pounds and has brown hair and brown eyes. § 87(2)(b) provided a brief telephone statement on June 3, 2008 (encl. 8).

On May 5, 2008, at approximately 9:00 PM, § 87(2)(b) was inside her residence, located at § 87(2)(b) in Brooklyn. § 87(2)(b)'s boyfriend, § 87(2)(b) § 87(2)(b) called her and asked her to retrieve a glass jar of marijuana, which was inside their mutual residence. This jar was one inch wide and one inch tall and was full of marijuana. § 87(2)(b) § 87(2)(b) briefly came inside the house and § 87(2)(b) handed him the jar. § 87(2)(b) § 87(2)(b) sold the jar to someone outside. § 87(2)(b) was not with him at this time and did not see the person he sold it to or where § 87(2)(b) § 87(2)(b) was standing when he sold the jar.

Fifteen minutes later, § 87(2)(b) § 87(2)(b) began yelling. § 87(2)(b) ran outside with § 87(2)(b)'s mother, who was inside § 87(2)(b). An unmarked van was parked in front of § 87(2)(b). The rear of this van was pointed away from § 87(2)(b). Two officers, identified through the investigation as Det. Patrick Cherry and Det. Andrew Amplo of Narcotics Borough Brooklyn North, were pulling § 87(2)(b) by his arms towards the rear of the van. § 87(2)(b) ran towards the rear of the van, but was told to move away by one of the officers. § 87(2)(b) § 87(2)(b) briefly saw that § 87(2)(b)'s feet were hanging out of the van and pointed in such a way as to indicate that § 87(2)(b) § 87(2)(b) was lying face down on the floor of the van.

§ 87(2)(b) § 87(2)(b) yelled out, "He just hit me!" § 87(2)(b) § 87(2)(b) did not indicate which officer hit him. § 87(2)(b) § 87(2)(b) never saw an officer hit § 87(2)(b) § 87(2)(b) ran towards the rear of the van at this time. Det. Cherry told § 87(2)(b) to move away from the van in a very professional fashion. § 87(2)(b) § 87(2)(b) told § 87(2)(b) that an officer had hit § 87(2)(b). They were standing parallel to the middle of the van in the sidewalk in front of § 87(2)(b) § 87(2)(b) then walked towards the rear of the van. Det. Cherry said, "Move away from the van! Move away from the fucking van!" § 87(2)(b) § 87(2)(b) complied and explained that she just wanted to ensure that her son was all right.

§ 87(2)(b) told § 87(2)(b) to get her keys and her wallet from their house. As § 87(2)(b) was walking towards their house, she was approached by an additional officer, identified through the investigation as Sgt. Patrick Divers of Narcotics Borough Brooklyn North. Sgt. Divers asked her to walk over to where a female officer, identified through the investigation as Det. Megan Barone of Narcotics Borough Brooklyn North, was standing near 110 Weirfield Street. Either Sgt. Divers or Det. Barone informed § 87(2)(b) that she was going to be arrested for distributing marijuana. Det. Barone patted § 87(2)(b) all over her body and felt inside her pockets. Nothing was discovered as a result of this search.

Det. Barone handcuffed § 87(2)(b) and escorted her to the van, where she was placed inside with § 87(2)(b). Det. Cherry loosened § 87(2)(b)'s handcuffs and assisted him into a seated position. One of § 87(2)(b)'s acquaintances, whose name is § 87(2)(b) may have been handcuffed as well. § 87(2)(b) did not pay any attention to where § 87(2)(b) was, who handcuffed him or what happened to him after this point because she was focused on what was happening to her and to § 87(2)(b) § 87(2)(b) § 87(2)(b) and § 87(2)(b) were transported to the 83rd Precinct. When they arrived at the stationhouse, § 87(2)(b) noted that the right side of § 87(2)(b) § 87(2)(b) face was noticeably swollen.

§ 87(2)(b)

§ 87(2)(b) is a § 87(2)(b) § 87(2)(b) provided a brief telephone statement on June 30, 2008 (encl. 10).

On May 5, 2008, at approximately 8:30 PM, § 87(2)(b) was in residence, located at § 87(2)(b) in Brooklyn. § 87(2)(b) had not left his residence earlier that day. Suddenly, § 87(2)(b) heard his friend, § 87(2)(b) § 87(2)(b) screaming. § 87(2)(b) § 87(2)(b) was calling for his girlfriend, § 87(2)(b) and his mother. § 87(2)(b) quickly went outside. § 87(2)(b) § 87(2)(b)'s girlfriend, § 87(2)(b) and § 87(2)(b)'s mother, § 87(2)(b) § 87(2)(b) § 87(2)(b) exited their residence, located at § 87(2)(b), the same time as § 87(2)(b). They all ran to the sidewalk.

A dark colored van and an unmarked vehicle, possibly gray in color, was parked directly in front of § 87(2)(b). Both vehicles were parked against traffic on Weirfield Street, which is a one-way street. The rear of the police van was to § 87(2)(b)'s right and the unmarked vehicle was parked in front of the van. There were approximately four to five officers at the scene of the incident. Two to three officers, one of whom was a Hispanic male and the others black males, were standing at the rear of the police van with § 87(2)(b) who was in handcuffs.

A female officer, identified through the investigation as Det. Megan Barone of Narcotics Borough Brooklyn North, was walking back and forth on the sidewalk in front of § 87(2)(b)'s residence. A second officer, identified through the investigation as Det. Patrick Cherry of Narcotics Borough Brooklyn North, prevented § 87(2)(b) and § 87(2)(b) from getting closer to the van. Three officers, whom § 87(2)(b) could not describe, placed § 87(2)(b) into the van. § 87(2)(b) saw the van shaking and heard § 87(2)(b) § 87(2)(b) screaming. § 87(2)(b) assumed that the officers were using physical force against him.

When § 87(2)(b) asked what was happening, Det. Cherry instructed her to "Mind [her] fucking business." Det. Barone may also have cursed at § 87(2)(b) but § 87(2)(b) could not recall what she said exactly. § 87(2)(b) began walking towards § 87(2)(b) but was escorted to the unmarked vehicle parked in front of the van and secured in handcuffs. § 87(2)(b) was calm throughout the incident and never cursed at any of the officers. Both § 87(2)(b) and § 87(2)(b) never resisted. The officers remained at the location for about an hour.

The investigation took the following steps to obtain a formal statement from § 87(2)(b). Between June 11, 2008, and July 25, 2008, six calls were placed to § 87(2)(b)'s provided numbers. Letters were sent to § 87(2)(b) on June 11, 2008, and on August 20, 2008. The investigation was ultimately unable to obtain a formal statement from § 87(2)(b).

Attempts to Locate Additional Civilians:

§ 87(2)(b) Unknown

§ 87(2)(b) and § 87(2)(b) identified § 87(2)(b) as a witness in this case. The investigation made the following attempts to locate him. On July 2, 2008, a requested Verizon subpoena was returned to the investigator with negative results. On July 7, 2008, a Coles check yielded two possible numbers for § 87(2)(b)'s address. A requested Lexis Nexis check yielded these same results on July 8, 2008. A call was placed to each number on July 14, 2008. One of the numbers proved to be disconnected. An individual at the second number stated that § 87(2)(b) was not home, thus verifying that it was § 87(2)(b)'s number, but hung up before a message could be left. On July 16, 2008, a second call was placed to his number. An individual informed the investigator that § 87(2)(b) no longer resided at § 87(2)(b). This individual could not provide the investigator with § 87(2)(b)'s last name, his new address or any contact information for him. A third call was placed to this number on July 25, 2008. At this time, the number was no longer viable. On August 20, 2008, a final contact letter was mailed to § 87(2)(b) at § 87(2)(b), though there was no evidence suggest he still resided at this address. In the absence of any additional contact information for § 87(2)(b) the investigator was unable to make any further attempts to identify and speak with this individual.

Police Officer Statements

Sgt. Patrick Divers

Sgt. Patrick Divers is § 87(2)(b) [REDACTED] Sgt. Divers is assigned to Narcotics Borough Brooklyn North and has been a member of the service for twenty-one years. Sgt. Divers was interviewed at the CCRB on August 14, 2008 (encl. 15a – 15b). On the day of the incident, Sgt. Divers was the assigned team leader of a buy and bust operation. His partner was Det. Barone and he worked from 3:25 PM to 12:00 AM in plainclothes and was assigned to an unmarked vehicle. Sgt. Divers did not have his memobook with him at the time of his CCRB statement.

CCRB Statement

On May 5, 2008, Sgt. Divers was the assigned supervisor of a buy and bust operation which was being effected within the confines of the 83rd Precinct. Sgt. Divers arrived at the target location, which was Weirfield Street and Greenville Avenue, at approximately 8:20 PM. Sgt. Divers was training newly assigned undercover officers on the day of the incident. § 87(2)(b), § 87(2)(e), § 87(2)(f) [REDACTED]

Sgt. Divers notified his field team and instructed them to respond to this location. Sgt. Divers and Det. Barone then drove to the location and were the first at the scene. § 87(2)(b) [REDACTED] and a second individual, identified through the investigation as § 87(2)(b) [REDACTED] were still sitting on the steps in front of § 87(2)(b) [REDACTED]. Sgt. Divers and Det. Barone exited their vehicle and Sgt. Divers directed Det. Barone to handcuff both individuals. § 87(2)(b), § 87(2)(e), § 87(2)(f) [REDACTED]

§ 87(2)(b), § 87(2)(e), § 87(2)(f) [REDACTED]. Sgt. Divers then directed Det. Barone to remove § 87(2)(b) [REDACTED]'s handcuffs.

Det. Cherry and Det. Amplo responded to the location at this time. Sgt. Divers brought § 87(2)(b) [REDACTED] to Det. Cherry, who then walked § 87(2)(b) [REDACTED] towards the rear of the prisoner van. Sgt. Divers was standing at the front of the prisoner van and did not see the actual moment in which § 87(2)(b) [REDACTED] was placed in the van. Sgt. Divers never saw Det. Amplo or Det. Cherry use any physical force against § 87(2)(b) [REDACTED]. Sgt. Divers did not see § 87(2)(b) [REDACTED] resist at all, though he was later informed by Det. Cherry that it was necessary to physically assist him into the rear of the prisoner van. Sgt. Divers never saw § 87(2)(b) [REDACTED] punched in the face. Sgt. Divers never later observed any injuries on § 87(2)(b) [REDACTED] and never heard him complain of any injuries. Sgt. Divers never heard Det. Amplo or Det. Cherry direct any profanity towards § 87(2)(b) [REDACTED] or threaten § 87(2)(b) [REDACTED] with the use of physical force.

Around this time, several individuals started to approach Sgt. Divers and question him as to why § 87(2)(b) [REDACTED] had been arrested. Sgt. Divers spoke with these individuals and asked them to calm down. Sgt. Divers never saw any of these individuals attempt to walk closer to the prisoner van. Sgt. Divers explained that once he brought § 87(2)(b) [REDACTED] to Det. Cherry, he was no longer concerned with what was happening around the prisoner van and remained focused on speaking with the various individuals in front of the location. § 87(2)(b), § 87(2)(e), § 87(2)(f) [REDACTED]

§ 87(2)(b), § 87(2)(e), § 87(2)(f) [REDACTED]

officer. Sgt. Divers was familiar with the other female by face and by name, which he knew to be § 87(2)(b). This individual was identified through the investigation as § 87(2)(b). Sgt. Divers explained that he knew § 87(2)(b) from patrolling the 83rd Precinct and knew she worked at § 87(2)(b). Sgt. Divers directed Det. Barone to place § 87(2)(b) under arrest. He then began speaking with § 87(2)(b) who was upset that her son was being arrested. Sgt. Divers explained to § 87(2)(b) that § 87(2)(b) was being arrested for a narcotics related offense. Sgt. Divers never directed any profanity towards § 87(2)(b).

Sgt. Divers did not see any other officers speaking with § 87(2)(b). Throughout the incident, Sgt. Divers never heard any officers direct any profanity towards § 87(2)(b). Once the undercover officer returned to a police vehicle, he was driven past the incident location so that a confirmatory ID could be made of both § 87(2)(b) and § 87(2)(b). Once this was conducted, Sgt. Divers and his field team left the scene of the incident and later transported both § 87(2)(b) and § 87(2)(b) to the 83rd Precinct for arrest processing.

Det. Patrick Cherry

Det. Patrick Cherry is § 87(2)(b). Det. Cherry is assigned to Narcotics Borough Brooklyn North and has been a member of the service for eight years. Det. Cherry was interviewed at the CCRB on August 12, 2008 (encl. 16a – 16b). On the day of the incident, Det. Cherry worked from 3:27 PM to 12:00 AM with Det. Amplo. They were in plainclothes and assigned to an unmarked prisoner van. Det. Cherry did not have his memobook with him at the time of his interview with the CCRB.

CCRB Statement

On May 5, 2008, at approximately 9:00 PM, Det. Cherry and his partner, Det. Amplo, were parked three to four blocks away from § 87(2)(b) in Brooklyn. They received a radio communication that a positive buy had been made at this location. Det. Cherry and Det. Amplo drove onto Weirfield Street off of Evergreen Avenue and parked against traffic on the one-way street three to four houses down from § 87(2)(b). Det. Cherry and Det. Amplo exited the prisoner van. Det. Cherry observed one male, subsequently identified through his arrest as § 87(2)(b) in handcuffs. § 87(2)(b) was standing on the sidewalk in front of § 87(2)(b) with Sgt. Divers.

Sgt. Divers walked § 87(2)(b) to Det. Cherry, who was standing at the front left corner of the prisoner van. Det. Cherry then walked § 87(2)(b) down the driver's side of the van to the rear of the prisoner van. Det. Cherry held onto § 87(2)(b)'s upper left arm with his right hand. Sgt. Divers and Det. Amplo remained at the front of the van and began to speak with each other. When Det. Cherry reached the rear of the van, he continued to hold onto § 87(2)(b) with his right hand while unlocking the doors of the prisoner van with his left hand. § 87(2)(b) began pulling away from Det. Cherry as if he was trying to walk around or walk away. Det. Cherry pulled on § 87(2)(b)'s left arm to pull him closer to his body.

Det. Cherry opened both doors of the prisoner van and instructed § 87(2)(b) to enter the prisoner van. § 87(2)(b) verbally refused. § 87(2)(b) made various comments to the effect of, "Why? What did I do? I didn't do anything wrong." Det. Cherry instructed him to enter the van again. When § 87(2)(b) made no motion to do so, Det. Cherry pushed on his upper arms so that he faced the rear of the van and pushed him towards the van. § 87(2)(b) stepped into the van with one foot. Det. Cherry pushed and lifted § 87(2)(b) until he stepped the rest of the way inside. Det. Cherry then closed and locked the doors of the prisoner van. Only that physical force which was necessary to guide § 87(2)(b) into the van was used against him.

Det. Cherry never pushed § 87(2)(b) such that he was lying on the floor of the prisoner van. Det. Cherry never punched § 87(2)(b) in the face. Det. Cherry did not see any other officers use or threaten any physical force against § 87(2)(b). Det. Cherry never directed any profanity towards § 87(2)(b).

§ 87(2)(b) during the incident. Det. Cherry did not know what § 87(2)(b)'s specific involvement in the drug transaction had been.

Det. Cherry overheard Sgt. Diver's speaking with a female, identified through the investigation as § 87(2)(b). Det. Cherry was approached by § 87(2)(b) immediately after placing § 87(2)(b) in the van. § 87(2)(b) began asking him why § 87(2)(b) was being arrested and stated that he had done nothing wrong. Det. Cherry stated only that § 87(2)(b) had been arrested and instructed § 87(2)(b) to go to the precinct if she wanted any additional details, as he did not to engage himself in the same conversation she had just had with Sgt. Divers. Det. Cherry did not consider it a concern that she was getting too close to the prisoner van. Det. Cherry never instructed her to move away from the van. Det. Cherry never told her to "get the fuck" away from the van. Det. Cherry did not hear any other officers direct any profanity towards § 87(2)(b).

Another female, identified through the investigation as § 87(2)(b) was arrested at the location and placed in the prisoner van with § 87(2)(b). Both § 87(2)(b) and § 87(2)(b) were transported to the 83rd Precinct. Det. Cherry escorted them inside the precinct. Det. Cherry never observed any injuries on § 87(2)(b). § 87(2)(b) never complained of any injuries. Det. Cherry later took § 87(2)(b) to Central Booking. § 87(2)(b) was viewed by EMS and did not complain of any injuries at that time.

Det. Megan Barone

Det. Meagan Barone is § 87(2)(b). Det. Barone is assigned to Narcotics Borough Brooklyn North and has been a member of the service for six years. Det. Barone was interviewed at the CCRB on August 12, 2008 (encl. 14a – 14b). On the day of the incident, Det. Barone worked from 3:27 PM to 12:00 AM with Sgt. Divers in an unmarked vehicle and plainclothes. Det. Barone was the assigned arresting officer. Det. Barone's memobook (encl. 13a – 13b) notes that at 9:15 PM two arrests were effected at § 87(2)(b).

Police Reports

Det. Barone prepared the arrest reports (encl. 12a – 12b; encl. 13a – 13b) corresponding to § 87(2)(b) and § 87(2)(b)'s arrests. Both were arrested on May 5, 2008, at 9:00 PM, in front of § 87(2)(b) for criminal sale of a controlled substance in the forth degree and criminal sale of marijuana in the fourth degree. Det. Barone noted under § 87(2)(b)'s arrest report that he had exchanged a quantity of concentrated cannabis to an undercover police officer for a sum of prerecorded buy money. Under § 87(2)(b), § 87(2)(e), § 87(2)(f)

CCRB Statement

On May 5, 2008, at approximately 9:00 PM, Det. Barone and her partner, Sgt. Divers, were stationed in their unmarked vehicle in the vicinity of § 87(2)(b) § 87(2)(e), § 87(2)(f)

Det. Barone and Sgt. Divers responded to and parked in front of the location. They were the first unit to arrive at the scene.

Det. Barone saw a male, subsequently identified through his arrest as § 87(2)(b) standing on the sidewalk in front of § 87(2)(b). Det. Barone approached § 87(2)(b) and placed him in handcuffs. § 87(2)(b) did not do or say anything which Det. Barone could specifically recall. She was the first officer who reached § 87(2)(b). Another male individual, identified through the investigation as § 87(2)(b) was also standing in front of the location § 87(2)(b), § 87(2)(e), § 87(2)(f)

§ 87(2)(e), § 87(2)(f)

§ 87(2)(b). § 87(2)(b) was also handcuffed, although Det. Barone could not recall whether he was handcuffed before or after § 87(2)(b)

§ 87(2)(b), § 87(2)(e), § 87(2)(f)

Det. Barone did not witness the actual moment in which § 87(2)(b) was placed in the prisoner van. Det. Barone did not know whether § 87(2)(b) resisted in any way or whether the officers experienced any difficulty in placing § 87(2)(b) into the prisoner van. Det. Barone never saw Det. Cherry or Det. Amplo use any physical force against § 87(2)(b). Det. Barone never saw either of these officers punch § 87(2)(b). Det. Barone never heard any officers direct any profanity towards § 87(2)(b)

Within one to two minutes after Det. Barone arrived at the location, a female, subsequently identified through her arrest as § 87(2)(b) walked onto the sidewalk in front of § 87(2)(b). Det. Barone did not see which building she exited, though Det. Barone assumed it was § 87(2)(b). Det. Barone did not know whether § 87(2)(b) walked towards the officers in the company of any additional individuals. § 87(2)(b) walked towards the vicinity of where Det. Barone was standing. Det. Barone noted that she matched the initial physical description of the female who had dropped the drugs out of the window. § 87(2)(b), § 87(2)(e), § 87(2)(f)

Det. Barone then approached and handcuffed § 87(2)(b). Det. Barone frisked and searched her incident to her arrest, but did not discover any contraband on her person.

At some point during the incident, another female, identified through the investigation as § 87(2)(b) approached Det. Barone. § 87(2)(b) identified herself as § 87(2)(b)'s mother and asked what was happening. Det. Barone explained the situation. She commented that § 87(2)(b) appeared upset that her son was being arrested, but never screamed or yelled. Det. Barone did not see § 87(2)(b) speak to any other officers. Det. Barone never heard any officers direct any profanity towards her. Det. Barone did not hear any officers say, "Get the fuck away from the van." Det. Barone did know whether § 87(2)(b) had attempted to get closer to the van. Det. Barone placed § 87(2)(b) into the prisoner van. Det. Barone and members of the field team returned to the 83rd Precinct later that evening. Det. Barone prepared § 87(2)(b) and § 87(2)(b)'s arrest paperwork. Det. Barone never observed any injuries on § 87(2)(b)'s person and never heard § 87(2)(b) complain of any injuries.

Det. Andrew Amplo

Det. Andrew Amplo is § 87(2)(b)

Det. Amplo is assigned to Narcotics Borough Brooklyn North and has been a member of the service for nine years. Det. Amplo was interviewed at the CCRB on August 12, 2008 (encl. 18a – 18b). On the day of the incident, Det. Amplo was assigned to the prisoner van and worked from 3:27 PM to 12:00 AM with Det. Cherry in plainclothes. There were no entries in Det. Amplo's memobook (encl. 17a – 17b) pertaining to the incident.

CCRB Statement

Det. Amplo did not have an independent recollection of an incident transpiring on May 5, 2008, at approximately 9:00 PM, in the vicinity of § 87(2)(b) § 87(2)(e), § 87(2)(f)

details regarding which units first responded to the scene. These details did not aid in Det. Amplo's recollection. Det. Amplo did not recall an individual identifying herself as an arrestee's mother or recall any individuals attempting to interfere in or question the officers about any of the arrests effected on the day of the incident. Det. Amplo did not recall responding to the scene or transporting any prisoners from this location to the 83rd Precinct. Det. Amplo did not use any physical force against anyone or direct profanity towards anyone. Det. Amplo never observed any officers use any physical force against any civilians, nor did he hear any officers direct any profanity at anyone.

Det. Michael Scibilia

Det. Domenico Scibilia is § 87(2)(b)

Det. Scibilia is assigned to Narcotics Borough Brooklyn North and has been a member of the service for seven years. Det. Scibilia was interviewed at the CCRB on August 7, 2008 (encl. 20a – 20b). On the day of the incident, Det. Scibilia worked from 3:57 PM to 12:00 AM with Det. Separ. They were assigned to an unmarked chase car, number 8813, and were in plainclothes. Det. Scibilia's memobook (encl. 19a – 19b) noted that at 8:10 PM, Det. Scibilia and Det. Separ were in the vicinity of Bushwick Avenue and Weirfield Street. At 8:15 PM, Det. Scibilia noted that two arrests had been made near that location.

CCRB Statement

On May 5, 2008, at approximately 8:10 PM, Det. Scibilia and his partner, Det. Separ, were parked in their assigned vehicle near the corner of Bushwick Avenue and Weirfield Street. Det. Scibilia did not recall whether he was the operator of their assigned vehicle. Det. Scibilia and members of his field team were executing a buy and bust operation § 87(2)(e), § 87(2)(f)

§ 87(2)(e), § 87(2)(f)

§ 87(2)(e), § 87(2)(f)

§ 87(2)(e), § 87(2)(f)

Det. Scibilia parked on Evergreen Avenue such that he was looking onto Weirfield Street. Det. Scibilia and Det. Separ never exited their vehicle while at this location. Det. Scibilia observed that the prisoner van was parked about four car lengths down the street. Det. Scibilia assumed that it was double parked. The rear of the van was pointed towards Evergreen Avenue. A black of Hispanic male, identified through the investigation as § 87(2)(b) was in handcuffs. Det. Scibilia did not recall which officers were with § 87(2)(b) Det. Scibilia saw § 87(2)(b) escorted towards and placed into the prisoner van. Det. Scibilia never saw any officers use any physical force against § 87(2)(b) Det. Scibilia never saw an officer punch or push § 87(2)(b) Det. Scibilia never saw § 87(2)(b) lying on the floor of the prisoner van with his legs extended outside past the van's rear doors.

There were a number of individuals watching the incident. They were standing on the street, but were not interfering with the officers' attempts to place § 87(2)(b) in the prisoner van. Det. Scibilia explained that he remained in his vehicle because it was clear that the officers did not need any assistance. Had any individuals attempted to interfere with the officers' duties, Det. Scibilia would have exited his assigned vehicle to assist them. Once Det. Scibilia saw that § 87(2)(b) was being placed in the prisoner van, he and Det. Separ responded to the next location of the buy and bust operation. He was at the location for

about five minutes. Det. Scibilia did not see anyone else in handcuffs or see anyone else arrested at that location.

Det. Scibilia never heard any officers threaten anyone with physical force or direct any profanity towards any individuals. Det. Scibilia was not close enough to the incident to hear what anyone was saying. He was presented with a photograph of § 87(2)(b). He was not familiar with this photograph. When Det. Scibilia later returned to the 83rd Precinct, he did not see or have any interaction with anyone who was arrested as part of the buy and bust operation. Det. Scibilia never observed or heard of any injuries on anyone arrested that day. Det. Scibilia was never later apprised as to § 87(2)(b)'s role in the drug transaction.

Medical Records:

Pre-Arrest Screening Form

A pre-arrest screening form (encl. 21) was prepared for § 87(2)(b) on May 5, 2008. The report noted that § 87(2)(b) was not presently sick or injured. No comments were noted under his visual assessment.

Police Department Documents:

Narcotics Borough Brooklyn North Roll Call

The roll call for the 83rd Precinct module on May 5, 2008 (encl. 22), noted that Sgt. Divers, Det. Amplo, Det. Barone, Det. Cherry, and Det. Scibilia worked an adjusted tour from 3:47 PM to 12:00 AM to execute a buy and bust operation.

Narcotics Borough Brooklyn North Tactical Plan

The tactical plan for May 5, 2008 (encl. 23) noted that Sgt. Divers and Det. Barone were the assigned team leaders in a grey unmarked vehicle. Det. Cherry and Det. Amplo were assigned to the prisoner van and Det. Scibilia was assigned to Team One in an unmarked tan vehicle. The first target location noted on the tactical plan was Weirfield Street and Bushwick Avenue.

Narcotics Borough Brooklyn North Movement Sheet

The movement sheet for May 5, 2008 (encl. 24) notes that Sgt. Divers, Det. Barone and their field team left the 83rd Precinct at 5:30 AM to conduct a buy and bust operation.

§ 87(2)(b), § 87(2)(e), § 87(2)(f)

[REDACTED]

Expense Report

An expense report (encl. 27) was generated on May 5, 2008, as a result of the incident. The report noted that ten dollars were expended, recovered and vouchered. These funds were used during an sale in front of § 87(2)(b) at 8:55 PM, in which two subjects, § 87(2)(b) and § 87(2)(b) were involved.

§ 87(2)(b), § 87(2)(e), § 87(2)(f)

[REDACTED]

83rd Precinct Command Log

The command log for May 5, 2008 (encl. 29), notes that § 87(2)(b) was arrested by Det. Barone in front of § 87(2)(b). His physical and mental condition was listed as apparently normal. He was transported to Central Booking at 12:40 AM by Det. Amplo.

Property Vouchers

The following property was vouchered to § 87(2)(b) as arrest evidence (encl. 30a – 30c): One glass jar with a blue top containing concentrated cannabis, § 87(2)(e), § 87(2)(f) ten dollars in U.S. currency.

§ 87(2)(b) Arrest Photo

There was no observable sign of any injury on § 87(2)(b)'s arrest photo (encl. 6).

§ 87(2)(b) Arrest Photo

There was no observable sign of any injury on § 87(2)(b)'s arrest photo (encl. 9).

§ 87(2)(b)

[REDACTED]

§ 87(2)(b), § 87(2)(c) (impair contract awards or CBAs)

[REDACTED]

Officer CCRB History

Sgt. Patrick Divers has been a member of the service for twenty-one years (encl. 1a – 1b). A vehicle search allegation was substantiated against him in CCRB case number 200305249 and instructions were given.

§ 87(2)(g), § 87(4-b)

§ 87(2)(b) Sgt. Divers has had no other allegations substantiated against him.

Det. Patrick Cherry has been a member of the service for seven years (encl. 1c – 1d). A frisk and/or search allegation and a force allegation were substantiated against him in CCRB case number 200305443. Charges were recommended and Det. Cherry was found not guilty of both specifications during a departmental hearing. A question and/or stopped allegation and a frisk and/or search allegation were substantiated against him in CCRB case number 200400928. Charges were recommended and Det. Cherry was found not guilty of both specifications during a departmental hearing. Det. Cherry has had no other allegations substantiated against him.

Conclusions and Recommendations

Officer Identification

§ 87(2)(b) stated that a white male who was about 6'2" to 6'3" tall, medium build, had white hair, and appeared to be in his forties arrived at the scene with a female officer and handcuffed him. As this matches Sgt. Divers' physical description and as Sgt. Divers was admittedly the first officer at the scene with Det. Megan Barone, this allegation is pleaded against him. While the investigation was unable to speak with § 87(2)(b) regarding the way in which he was stopped, Sgt. Divers admitted to authorizing and overseeing the stop of this individual. As a result, this allegation has also been pleaded against Sgt. Divers.

§ 87(2)(b) alleged that a white male who arrived in a prisoner van and was about 5'11" to 6'1" tall, of medium build, and appeared to be bald with some blonde hair, spoke discourteously to him, brought him to a prisoner van, used physical force against him and threatened him with the use of physical force. As Det. Cherry matches this physical description, was assigned to the prisoner van and admitted to using physical force against § 87(2)(b) the aforementioned allegations have been pleaded against him.

§ 87(2)(b) alleged that a male of the same physical description as Det. Cherry directed profanity towards her after placing § 87(2)(b) in the prisoner van. This allegation has therefore been pleaded against Det. Cherry.

Undisputed Facts

It is undisputed that § 87(2)(b) and § 87(2)(b) sold marijuana to an undercover officer. It is undisputed that Sgt. Divers' stopped § 87(2)(b). It is undisputed that Det. Cherry escorted § 87(2)(b) to the rear of the prisoner van. It is undisputed that Det. Cherry used physical force to place § 87(2)(b) into the prisoner van.

Disputed Facts

It is disputed whether Sgt. Divers' handcuffed § 87(2)(b). The manner of physical force used against § 87(2)(b) by Det. Cherry is in dispute. It is also disputed whether Det. Cherry punched § 87(2)(b) or threatened him with physical force. It is disputed whether Det. Cherry directed profanity towards § 87(2)(b) or § 87(2)(b).

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(c), § 87(2)(f), § 87(2)(g)

[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

§ 87(2)(b), § 87(2)(g)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Allegations Not Pleaded

As § 87(2)(b) was frisked and searched incident to her arrest, these allegations have not been pleaded.

Allegation A. Sgt. Patrick Divers stopped § 87(2)(b) Unknown

As was addressed under additional attempts to contact civilians, the investigation was ultimately unable to speak with § 87(2)(b) regarding the incident and thus unable to evaluate the manner in which was approached and stopped. § 87(2)(g)

Allegation B. Sgt. Patrick Divers stopped § 87(2)(b)

An individual is seized within the meaning of the Fourth Amendment when his freedom of movement is constrained in such a way that a reasonable person would not feel free to leave. According to *Terry v. Ohio*, a police officer may execute a forcible stop of a particular individual when “he reasonably suspects that such person is committing, has committed or is about to commit” a crime (encl. 1a). In order to meet the standard of constitutionality, reasonable suspicion must be predicated upon those specific and articulable facts which led to the stop.

In this case, § 87(2)(b) was forcibly stopped when, under the supervision and direction of Sgt. Divers, he was handcuffed. Sgt. Divers did not, at the time in which he handcuffed § 87(2)(b) know whether § 87(2)(b) was the individual who had engaged in the drug transaction. According to *People v. Mack*, “reasonable suspicion to detain a suspect for a confirmatory identification by an undercover police officer

is frequently justified by a description given by the undercover officer and the close spatial and temporal proximity of the suspect to the crime” (encl. 1b).

§ 87(2)(b), § 87(2)(g), § 87(2)(e), § 87(2)(f)
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]).

§ 87(2)(b), § 87(2)(g), § 87(2)(e), § 87(2)(f)
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Allegation C. Det. Patrick Cherry spoke obscenely to § 87(2)(b) and § 87(2)(b)

§ 87(2)(b), § 87(2)(g)
[REDACTED]
[REDACTED]
[REDACTED]

Allegation D. Det. Patrick Cherry used physical force against § 87(2)(b)

The investigation determined that Det. Cherry escorted § 87(2)(b) to the rear of the prisoner van by grasping his upper arms and then physical escorted him into the van by pushing on his arms and lifting him until he stepped inside the van. § 87(2)(b), § 87(2)(g)
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

Allegation E. Det. Patrick Cherry threatened § 87(2)(b) with the use of physical force

§ 87(2)(b), § 87(2)(g)
[REDACTED]
[REDACTED]
[REDACTED]

Investigator:	Date:
Supervisor:	Date:
Reviewed by:	Date:
Reviewed by:	Date: